

MEMORANDUM

July 12, 1994

TO: [Name1 withheld], Councilmember
Montgomery County Council

FROM: Jay L. Cohen, Chair [initialed]
County Ethics Commission

RE: Request for Advisory Opinion

You have requested an advisory opinion from the Ethics Commission concerning whether a waiver is needed for you to retain a law firm that participates in matters before the Montgomery County Council to perform personal services for you and your husband. The response to your request depends upon whether a conflict of interest exists or is reasonably likely to result from the firm's performance of personal services for you.

Background

The pertinent information you have provided indicates that you are a member of the Montgomery County Council and you have consulted a local law firm for the preparation of personal items, such as a trust and other legal documents. You indicated that you will pay the normal and regular fees for the services provided by the firm. Several members of the law firm are registered with the Ethics Commission as lobbyists and appear regularly before the Montgomery County Council on various issues. For purposes of this opinion, the Commission assumes that the attorney who will prepare the personal documents for you is not one of the individuals who have registered as a lobbyist.

Applicable Law

The Montgomery County Code provides that:

[U]nless permitted by a waiver, a public employee must not participate in:

* * *

- (2) any matter if the public employee knows or reasonably should know that any party to the matter is:

* * *

- (E) any business or individual that is a party to an existing contract with the public employee or a relative, if the contract could

reasonably result in a conflict between private interests and official duties. . . .

§19A-11(a)(2)(E) of the Montgomery County Code 1984, as amended.

Analysis

The Commission has determined that the law firm may perform personal legal services for you and your husband, because no conflict of interest exists. The section of the Ethics Law quoted above notes that a public employee may not participate in a matter involving a business or individual that has a contractual relationship with the employee "if the contract could reasonably result in a conflict between private interests and official duties" In the present situation, the attorney performing the preparation of legal documents for you and your husband is not one of the attorneys registered as a lobbyist and appearing before the Montgomery County Council. The matters being handled are purely personal and do not involve issues that may come before the Council. In addition, you will pay the normal fees associated with the performance of these services.

As a result, the Ethics Commission concludes that there is not a conflict of interest, because the preparation of legal documents for your personal use is not reasonably likely to result in a conflict. Inasmuch as no conflict exists, you need not disclose the performance of personal legal services when the firm appears before the Council, nor must you recuse yourself from deliberations on an issue when the firm has appeared before the Council.

If you have additional questions, please do not hesitate to contact the Commission.

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